



THE INTERIM

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LAWS DEMONSTRATIONS--TRACKING THE LEGISLATIVE SESSION ON LINE

Demonstrations set for November and December...The next regular session of the Montana Legislature begins Monday, Jan. 5. The Legislative Services Division is offering demonstrations of the Legislative Automated Workflow System, or LAWS, to help the public and state agencies track legislation during the session. LAWS provides Internet access to timely legislative information before, during, and after a session, including up-to-date bill status, bill text, hearing schedules, agendas, journals, legislator information, and more.

Demonstrations are scheduled for Nov. 19 and Dec. 4 and will be held in Room 102 of the Capitol. Two demonstrations will be given on Nov. 19--9:30 a.m. to 11:30 a.m. and 1 p.m. to 3 p.m. One demonstration will be given on Dec. 4--9:30 a.m. to 11:30 a.m. The demonstrations are identical, so you only need to attend one, and registration is not required.

The LAWS website for the 2009 session is <http://leg.mt.gov/laws.htm>; it can also be accessed from the legislative branch homepage.

LEGISLATIVE INTERN PROGRAM

Legislators asked to sponsor interns...Montana law provides for a legislative intern program that is administered by the Legislative Council. Susan Byorth Fox, executive director of the Legislative Services Division, is asking legislators who are interested in sponsoring an intern during the 2009 session to notify her by Nov. 12. A legislator may join with other legislators to sponsor an intern. The Legislative Council is meeting Nov. 18 to assign interns.

Legislative intern duties include analyzing bills and preparing bill summaries, conducting research, drafting presentations for a bill or speeches to be given by a sponsor to a citizen group or other audience, answering constituent mail, preparing a daily status of bills of particular interest to the intern's sponsor, preparing a draft daily agenda of bills to be heard in the sponsor's committees, or making phone calls and appointments for the sponsor.

The purpose of the program is to provide qualified students at Montana institutions of higher learning with a working knowledge of representative government by allowing them to observe the Legislature during a regular sessions.

Each tribal college, private college, two-year public college, and unit of the university system in Montana may designate at least one intern. The president of the college or university chooses the intern. The Legislative Council may appoint five additional interns.

The Legislature does not pay a stipend or other compensation for internships. However, a student may arrange in advance with the student's school to get academic credit for an internship. There is also a possibility of paid part-time position

THE INTERIM

Montana Legislative Services Division
Room 110, State Capitol
PO Box 201706
Helena, MT 59620-1706
Phone: (406) 444-3064
Fax: (406) 444-3036

THE INTERIM is a monthly newsletter that reports on the interim activities of legislative committees, including the Legislative Council, the Environmental Quality Council, the Legislative Finance Committee, the Legislative Audit Committee, and interim legislative committees and subcommittees staffed by the Legislative Services Division. Information about the committees, including meeting schedules, agendas, and reports, is found at <http://www.leg.mt.gov>. Follow the "Committees" link or the "Interims" link to the relevant committee. The newsletter is posted on the legislative branch website on the first of each month (follow the "Publications" link).

A Publication of  **Legislative Services Division**

with TVMT for students who may be interested in broadcasting.

Legislators who are interested in sponsoring an intern must contact Fox at (406) 444-3066 or sfox@mt.gov by Nov. 12. You may also send a letter to Susan Byorth Fox Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

Students who are interested in being a legislative intern can find more information and an application form online by going to www.leg.mt.gov. Click on "Intern Program" under "For the Classroom" in the left hand column.

LEGISLATIVE COUNCIL

Final session work...The Legislative Council is meeting Tuesday afternoon, Nov. 18 in Room 152 of the Capitol. The council will appoint a representative to the National Conference of Commissioners on Uniform State Laws and legislative interns. The council will also adopt of a pay matrix for session staff and consider additional information on the proposed legislative budget.

REVENUE AND TRANSPORTATION COMMITTEE

Committee to Adopt Revenue Estimates in November...The Revenue and Transportation Interim Committee will meet Nov. 17 and 18 in Room 137 of the Capitol. On Nov. 17 the committee will adopt the initial revenue estimates for the 2009 legislative session. Patrick Barkey, director of the Bureau of Business and Economic Research at the University of Montana and Myles Watts, professor of agricultural economics at Montana State University, will discuss Montana's economic outlook. A speaker has been invited to talk about oil price trends. Carroll South, of the Board of Investments, will discuss the accounting of two structured investment vehicles in the state's short-term investment pool.

Committee to look at property reappraisal numbers...On Nov. 18, the Montana Department of Revenue will report on the preliminary results of the periodic reappraisal of agricultural land, residential and commercial property, and forest lands. The department is required to revalue these types of property every six years. The new values will be effective in tax year 2009. In the past, the Legislature has developed mitigation strategies to offset the relatively large increases in residential and commercial property because of reappraisal. Last December, the committee appointed a subcommittee (HB 488 subcommittee) to evaluate mitigation strategies for the new reappraisal. The subcommittee was hampered in making any specific recommendations because of the lack of data.

Following the department's report, the committee will run some proposals through the department's property tax

simulation model to evaluate their effects on the property tax system. The committee will also discuss other ideas for dealing with reappraisal. The public is encouraged to attend.

The committee will also review a bill draft (LC 598) to revise the list of countries that are considered tax havens for purposes of a water's-edge election under the corporation income tax.

December meeting planned...The committee plans on meeting in early December to further evaluate property reappraisal.

For more information about the committee, contact Jeff Martin, committee staff, at (406) 444-3595 or jmartin@mt.gov.

LEGISLATIVE AUDIT COMMITTEE

Audit committee meeting in November...The Legislative Audit Committee meets Nov. 6 and 7 in Room 172 of the Capitol. An agenda is not yet available; however, audit reports to be presented at that time include:

Financial-Compliance Audits:

- Board of Public Education
- Department of Corrections
- Department of Environmental Quality
- Department of Justice
- Department of Military Affairs
- Department of Natural Resources and Conservation
- Department of Public Service Regulation
- Judicial Branch
- Montana Historical Society
- Montana School for the Deaf and Blind
- Office of the Governor and Lieutenant Governor
- Office of the Secretary of State
- State Auditor's Office

Information Systems Audits:

- Lottery Security

For more information about the Legislative Audit Committee, contact Tori Hunthausen, legislative auditor, at (406) 444-3122 or thunthausen@mt.gov.

CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES

Final report on mental health study presented...The Children and Families Committee met Oct. 14 to hear the final findings and recommendations on the mental health study conducted by DMA Health Strategies of Massachusetts. The meeting involved not only presentations by DMA, but also responses from state agency staff and comments from the public.

DMA was hired to conduct a study of the state's publicly funded mental health system in order to identify gaps in services and opportunities for funding and organizational changes.

The study concluded that while the state could take steps to improve its mental health system, Montana is "a progressive state that has been creative and proactive in piecing together multiple state, federal, and local sources of funding to serve as many of its citizens as possible, wherever they live." However, the study also noted that funding for many of the services the state has created has been patched together, and thus the system does not always provide equal access to services.

Key findings focus on capacity, eligibility...The study found, among other things, that Montana's mental health system:

- contains inequities in access to service and in reimbursement rates between the children's and adult mental health systems and across urban, rural, and frontier areas;
- places such strict income and illness limits on eligibility for adults that some Montanans are not receiving needed services and others may reach a mental health crisis before they are able to obtain services;
- needs more community-based services to reduce admissions to the Montana State Hospital, with a particular need for crisis stabilization services;
- lacks enough providers, ranging from psychiatrists to mid-level practitioners such as Advanced Practice Registered Nurses; and
- is unclear about the roles of local and regional advisory groups in planning for mental health services.

How to improve the system?...DMA recommended numerous steps for improving the mental health system. Many revolved around strengthening crisis services, including creating such services for children. The report also recommended increasing funding for the newly created 72-hour presumptive eligibility program that pays for crisis services for adults who have no insurance coverage for the services; the report also said the effectiveness of the current program should be monitored so the program could be modified as needed.

Other recommendations included:

- making the best use of federal Medicaid dollars by reducing gaps in Medicaid eligibility in a variety of ways and creating a Medicaid procedure for certain foster care children who in the past have received mental health services funded entirely by state general fund dollars;
- restructuring the system to create a managed care

system, possibly operated by a public or quasi-public agency.

- providing flexible funding for children whose mental health needs put them at risk of being placed outside of their communities for treatment;
- reconsidering legislation to allow the Montana State Hospital to refuse admission, in order to keep the hospital's census at its licensed level;
- strengthening the discharge planning process for patients at the Montana State Hospital and funding the services they will need when they return to the community;
- finding ways to finance the behavioral health inpatient facilities authorized in law;
- putting telepsychiatry into place to provide services in areas that lack psychiatrists;
- establishing performance measures in state contracts with mental health providers; and
- improving the local planning process.

Where to from here?...After a full day of presentations, agency responses, and public comment, the committee approved the drafting of four bills related to the study and also suggested amendments to two bills approved by the Law and Justice Interim Committee. But committee members stressed that these were just the first steps in what will be a long-term process of using the study to improve the mental health services provided by the state.

The four bill drafts requested by the committee are:

- LC 592, for an interim study of a care coordination organization for a managed care mental health system;
- LC 593, to appropriate \$2.4 million to sustain existing Kids Management Authorities (KMAs) and create 10 additional KMAs, which serve as local planning groups for meeting children's mental health needs;
- LC 594, to clarify statutes involving local and regional advisory groups in the mental health system; and
- LC 595, to appropriate \$250,000 to meet the mental health needs of children up to the age of 6 and of high-risk children with multi-agency needs

The committee will also propose revisions to two bill drafts stemming from LJIC's studies on the mental health needs of justice-involved individuals. The committee proposed that LC 307, for a grant program for creating crisis capacity in communities, be amended to include police Crisis

Intervention Team training as an eligible grant program activity and to encourage counties to provide matching funds for collaborative crisis services. It also proposed that LC 329, for a pilot project to screen all jail inmates for suicide risk, be revised to require screening for any mental health problem.

In addition, the committee approved sending letters to the Department of Public Health and Human Services and the Department of Corrections, asking each agency to report to the 2009 joint appropriations subcommittees that handle their budgets. The letters ask the agencies to update the subcommittees on which study recommendations the agencies will carry out on their own and which they would like to pursue but would require legislative support. The committee also will send letters to the Indian Health Service and tribal governments asking that they collaborate with the state to increase Medicaid enrollments, maximize reimbursements, and work together to best serve the needs of tribal members with mental health needs.

LEGISLATIVE FINANCE COMMITTEE

Finance committee meets in October...The Legislative Finance Committee met on Oct. 9-10. Key items presented at the meeting are described below. Reports and audio minutes for the meeting are on the Legislative Fiscal Division website at www.leg.mt.gov/lfc. For more information contact Clayton Schenck at cschenck@mt.gov or any LFD staff at (406) 444-2986.

General Fund Status – FY 2008 Actual and 2009 Biennium Projected...The preliminary general fund account unreserved, undesignated ending balance for FY 2008 is \$437.7 million, or \$246.9 million above the level anticipated by the 60th Legislature. It should be noted that \$51.7 million of this balance is “reestablished” to be expended in FY 2009. The 2009 biennium ending general fund balance is projected to be \$483.3 million or \$358.2 million more than budgeted by the 60th Legislature. This balance is based on no supplemental appropriations for FY 2009 but does include \$16.5 million for emergency appropriations. Higher than estimated individual income tax and oil and gas production tax collections account for the largest portion of the increase.

For more information, contact Terry Johnson at tjohnson@mt.gov or at (406) 444-2952.

The “Big Picture Report” - 2001 Biennium...The 61st Legislature inherits a present law excess fund balance similar to the record amount inherited by the 60th Legislature in the 2007 session. Yet the economic outlook for the 2011 biennium is dramatically different. The fund excess is primarily due to strong growth in individual and corporate income taxes and oil and gas taxes from 2004 to 2008. The projected present law ending general fund balance for the 2011 biennium is \$778.6 million with an allowance for a 3 percent ending fund balance reserve and allowances for fire suppression and emergency appropriation costs. However, current estimates do not capture the full impact of the current

economic crisis. Therefore, the balance is reduced to \$503.1 million when allowing a reserve for the unpredictable impacts of a more severe economic downturn. It is emphasized that this is a conservative and responsible estimate for planning purposes, but as more information becomes available before the 2009 session, the available balance could change significantly.

This balance leaves the 61st Legislature with significant flexibility when prioritizing a present law budget and more opportunities when considering new initiatives, including both new programs and tax policy changes. It is important to keep in mind, however, that there are a number of issues described in the report, with potential material impacts on the 2011 biennium budget that are not included in the projections. The fate of these potential issues could significantly reduce the funds available for the 2011 biennium budget prioritization process.

In addition, the Legislature needs to keep in mind the objective of maintaining a structurally balanced general fund. If structural balance is to be achieved, it is important to note that not all of the projected balance would be available for initiatives and funding of an ongoing nature. Only \$421.8 million would be available for ongoing expenditures, while the remainder should either be held in reserve or used for one-time expenditures. Additionally, the Legislature should consider the potential length of an economic recession when establishing the budget policy for the use of the excess fund balance, and the sustainability of the state present law budget in future biennia if the economic downturn continues beyond the 2011 biennium.

For more information, contact Clayton Schenck at cschenck@mt.gov or at (406) 444-2986 or Terry Johnson.

Montana Economic Outlook...Patrick Barkey, director of the Bureau of Business and Economic Research (BBER) of the University of Montana, reported that although the bureau has pared back its growth assumption for 2008 and 2009 from 4 percent to 3.3 percent, the Montana data is still showing signs of a growing economy. He discussed a variety of risks that exist in the world economy, saying that some of the strong growth experienced in Montana is tied to the global economy. While there is some uncertainty due to a lack of data at this point in time and because of the list of “risks” that are inherent in the situation, Mr. Barkey characterized the BBER forecast as “cautiously optimistic” and said that they expect the Montana economy to outperform the U.S. economy.

MHESAC Issues Update...Although the Montana Higher Education Student Assistance Corporation (MHESAC) continues to feel the effects of the national economic and credit crisis, Jim Stipcich, president and CEO of the Student Assistance Foundation and lead staff for MHESAC reported that MHESAC has approximately \$175 million of financing in place to support student loans for resident students for the next academic year. If necessary, MHESAC could consider using a provision included in the recently-enacted federal “Ensuring Continued Access to Student Loans Act” (H.R. 5715) that allows the sale of

student loans from the 2008-09 academic year to the US Department of Education to generate financing for the 2009-10 academic year.

On a related matter, the Legislative Finance Committee approved LC 147 as a committee bill. LC 147 is a draft resolution of the Legislative Finance Committee requesting an interim study of the student loan system in Montana, specifically: 1) a comparative analysis of the guaranteed student loan system currently used in Montana to the direct student loan system, which is an alternative to the guaranteed student loan program; 2) options for identifying the optimum student debt load for Montana resident students in order to identify funding benchmarks for student financial assistance and tuition; and 3) policy options related to state funding of need-based financial aid versus merit-based financial aid for Montana resident students.

For more information, contact Pam Joehler at pjoehler@mt.gov or (406) 444-5387.

Fire Suppression Costs...The state has incurred \$8.5 million in fire suppression costs as of Sept. 5, of which \$2.5 million is reimbursable by other parties, creating a net cost to the state of \$6 million. This total compares to an average fire season state share cost of \$17.7 million and a state share cost from FY 2008 of \$50 million. The state share of fire costs will be paid from the fire suppression fund created and funded in HB 3 enacted in the September 2007 special session.

The fire suppression fund was established with a \$40 million general fund transfer. In addition, the fund received interest earnings and some reimbursement for fire costs, bringing the total available to \$41.2 million. The fund covered fire suppression costs of \$6 million and provided \$1.2 million for the purchase of an additional 25 fire truck chassis for development into wildland fire engines. The latter was a request of the Fire Suppression Committee and approved by the Office of Budget and Program Planning. An additional \$1 million has been reserved for spring fire costs. After all paid and anticipated costs, the remaining balance is \$32.9 million. Since the fire suppression fund is set to expire at the end of FY 2009, the remaining balance would transfer to the general fund, unless the Legislature chooses to reauthorize the fund or transfer funds to another fund to use it for another purpose.

For more information, contact Barb Smith at basmith@mt.gov or (406) 444-5347.

Fiscal Implications of an EPA Audit on Public Water Supplies...Staff briefed the committee on the recent Environmental Protection Agency's review of the Public Water Supply program managed by the Department of Environmental Quality due to the potential need for increased resources. This review cited the DEQ for a number of issues related to the implementation of the Safe Water Drinking Act. These include the inability to enforce violations, slow or missing sanitary surveys, failure to apply regulations from 1995, and insufficient staffing. Most issues result in the need for additional resources to complete the work. The department augmented the current PWS staff by

obtaining an additional 9 FTE by using carry forward budget authority of approximately \$1 million. The governor's budget office approved the use of natural resource operating funds to cover the cost. DEQ's proposed budget includes a request to make the 9 FTE permanent with the use of general fund.

In relation to funding, the LFC reviewed the current status of the public water supply fee of \$2 per connection with a \$100 minimum. This fee has not been changed since FY 1994 when it was lowered from \$2.25 per connection. The briefing addressed the modification of this fee to fund increased resource needs. To adjust the fee for inflation, the fee would need to be raised to \$8. Staff noted that this issue would appear in the LFD's Budget Analysis of the 2011 Biennium budget.

For more information, contact Barb Smith.

Retirement Funds—Report on 2008 Valuations...Staff reported that the most recent actuarial valuations of the pension plans (as of June 30, 2008) shows eight of the nine plans within the 30-year amortization requirement for "actuarial soundness" as defined in statute. Only the Teachers' Retirement System has an amortization period that exceeds the 30-years, at 31.3 years. All plans and particularly the four plans that were the focus of efforts to shore them up have seen marked improvement as a result of legislative actions and some extraordinarily good investment returns in FY 2007. This report is qualified by two points. First, the valuations use a technique referred to as "smoothing" in which gains and losses are spread over a four year period so there is a significant amount of net losses that are unrecognized in the 2008 valuation. Second, pension funds, with total assets in excess of \$8 billion as of June 30, 2008, have been subject to the impact of an increasingly troubling U.S. and global economy since that time. For further information, contact Jon Moe at jonmoe@mt.gov or at (406) 444-4581.

Along with the pension plan report, Carroll South, of the Board of Investments, presented an update on the performance of pension funds and the market, stating that despite the recent drops in the equity market, stocks have performed well over the long term and are an important component of the overall investment portfolio for pension funds. He said that although assets values have decreased, the cash flow of pension funds for the purpose of meeting benefit payment obligations remains strong.

K-12 Facility Condition and Needs Assessment and Energy Audit...The committee heard the final report of the K-12 Facility Condition and Needs Assessment and Energy Audit project. The project was mandated in HB 1 of the December 2005 special session and was funded with an appropriation of \$2.5 million. The Architecture and Engineering Division (A&E) presented the results of phase I of the project at the October 2006 meeting and recommended the scope of phase II of the project at the October 2007 meeting. At the October 2008 meeting, A&E presented the executive summary of the results of study including: 1) a point-in-time facility condition assessment, 2) educational characteristics, 3) energy use factors, and 4) a

technological infrastructure survey for each of the schools in Montana.

The executive summary and phase II appendix are posted at the Office of Public Instruction Facilities website <http://opi.mt.gov/Facilities/Index.html>. The summary can also be found via the Legislative Fiscal Division website, by following the link titled "K-12 Public Schools Facility Condition Assessment Final Report/Executive Summary". The committee was advised that the report could provide guidance for the Legislature as they appropriate \$52 million of funds, set aside in SB 1 passed in the May 2007 special session, to schools for the purpose of facility upgrades.

For more information, contact Cathy Duncan at cduncan@mt.gov or (406) 444-4580.

Final Report of the Long-Range Planning Workgroup...The long-range planning workgroup made a final report to the Legislative Finance Committee on the four projects undertaken during the interim. The report summarized the results of the workgroup efforts on: 1) the capital project status reports (a tracking tool to quickly and easily provide the status of projects authorized in the Long-Range Building Program and the Long Range Information Technology Program), 2) TSEP funding issues (analysis of the cost of the program changes made by the 60th Legislature and the impact to future program/grant funding), FWP appropriation status (analysis of how FWP capital project appropriations are expended), and 4) a statutory definition for capital project (to clarify the meaning of "state capital project"). Details of the results of the workgroup efforts can be found on the LFD website in a report titled "Final Report of the Long-Range Planning Workgroup".

For more information, contact Cathy Duncan.

Performance Measurement...The Legislative Finance Committee established a performance measurement initiative to determine progress toward agency goals or initiatives given established appropriations. In October 2007, the committee approved the monitoring of 167 goals and initiatives from over 800 submitted with the governor's budget. At the October 2008 meeting, 92 performance reports were reviewed. The committee noted improvement in the narrative information provided by the programs along with the numerical data. With this narrative, workgroups were able to have discussions regarding progress toward program goals. From these discussions, legislators were able to inquire about the need for increased or decreased resources, potential changes to Montana statutes, and other operational changes.

Performance measurement reports from the October meeting can be found on the LFD's website at http://leg.mt.gov/css/fiscal/PM_Agency.asp. The reports provide the program's goal, corresponding performance measures and narrative. Some issues contained in the reports are: the implementation of the self-help law program, the development of telepsychiatry services, dental access, safety of public water supplies, implementation of the wildlife conservation plan, transferability of credits in the Montana university system, and several education initiatives.

After review, the workgroups requested that progress reports be provided on 46 of the reports. The majority of the updates will occur at the appropriation subcommittee budget deliberations next session. A few will require written reports in November and two have been slated for the LFC's agenda in June of 2009.

The last part of the performance measurement initiative will be launched with the release of the LFD's 2011 Biennium Budget Analysis, where the analysis will contain a review of 2009 goals and a preview of 2011 program goals. This review will provide a transition between what progress the agency has already made to what resources are needed to maintain or improve progress.

For additional information regarding the Performance Measurement Initiative, contact Barb Smith at basmith@mt.gov or (406) 444-5347 or Kris Wilkinson at kwilkinson@mt.gov or (406) 444-5834.

State Fund/Workers' Compensation Issues...In a couple of related agenda items, the Montana State Fund (MSF) and LFD staff presented a report on the MSF FY 2009 budget and discussed the activities of the State Fund study work group which also met in conjunction with the LFC meeting. On the MSF budget, discussions and recommendations included:

- MSF Board of Directors provide the LFC with a report on their plan to attain contribution to equity targets by FY 2014 (MSF president Lanny Hubbard agreed to provide the LFC a report from the board of directors on a plan to achieve the recommended equity targets when LFC hears the 2010 budget analysis in October 2009. MSF is to include the amount that contribution to equity charged to ratepayers will contribute to increasing equity.)
- Commissions to independent insurance producers are charged to all businesses insuring with MSF while only 45 percent of the businesses receive services from independent licensed producers. MSF paid \$16.8 million in commissions to independent insurance producers in FY 2008
- The unfunded Old Fund liability increased to \$36.5 million at June 30, 2008, and general fund may be required to pay benefits in FY 2011. The Legislature may wish to consider setting aside a portion of the unreserved ending general fund balance for future payments of Old Fund claims

On other workgroup activities, LFD staff had presented a report on the various options available to the Legislature when considering how state agencies obtain policies for workers' compensation insurance including:

- Self insuring
- Insuring the state of Montana under a single policy rather than each individual state agency obtaining a separate workers' compensation insurance policy

The workgroup had voted unanimously to recommend the LFC request a study resolution for consideration by the 2009 Legislature on the options for providing workers' compensation coverage for state employees. The full LFC approved a committee bill for a study resolution.

For more information, contact Kris Wilkinson at kwilkinson@mt.gov or (406) 444-5834.

Other Committee Bills Approved...Several bills developed during interim activities of the Legislative Finance Committee were discussed and ultimately approved to go forward as committee bills:

- LC0065--Eliminate certain general fund transfers
- LC0066--Revise or eliminate certain statutory appropriations
- LC0103--Land board approval for abandoned mine and reclamation program land transactions
- LC0146--State rainy day fund
- LC0268--Increase limit on budget change documents

- LC0269--Generally revise appropriation and budget statutes
- LC0270--Revise revenue streams to oil, gas, and coal natural resource account
- LC0271--Revise appropriations for aerospace and technology projects
- LC0273--Amend definition of enterprise funds
- LC0628--Revise statute regarding spending non-general fund money first

In addition, a study bill draft (LC0115) of the joint subcommittee of the Revenue and Transportation Interim Committee and the Legislative Finance Committee to study the long-term implications of revenues and costs relating to the aging of the Montana population was approved by the LFC. This study would look at the long-term stability of the general fund in connection to changing demographics of the state.

The bills are available on the LFD website. Contact the LFD staff for assistance in finding a copy of a bill.

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GETTING DOWN TO BUSINESS: BILL DRAFTING BASICS

Sheri Heffelfinger, Legislative Research Analyst
Montana Legislative Services Division

IT'S ONLY JUST BEGUN

After the elections, legislators are eager to get down to the business of lawmaking, and bill draft requests begin flooding into the Legislative Services Division. Legislative staff gird themselves and get down to the business of bill drafting. However, an idea is not transformed into legislation with the wave of a wand. Legislative Services Division bill drafters are nonpartisan, professional, and put their best effort into drafting each bill, but it takes a legislator who is engaged, diligent, and willing to work closely with staff to ensure that a bill will be drafted to accomplish all that the legislator intends.

In preparing to write this interim article, I asked the most experienced bill drafters what advice they could offer to legislators about how to be most effective in the bill drafting process. Some common themes emerged.

UNDERSTANDING THE PROCESS

Legislators should understand that each bill draft goes through a rigorous process that starts with the bill draft request. As a legislator or legislator-elect, you request a bill draft by submitting a blue bill draft request form to Legislative Services Division. You may also email or call in your request to a staff member who will fill out a request form for you. The form is given to the LSD legal services director who assigns a Legislative Council (LC) number to the bill draft request, creates a short title, enters the request into the automated bill status system, attaches a cover sheet entitled "Bill Draft Checklist Report", and assigns the request to a bill drafter.

Bill drafts are assigned according to a drafter's subject area, experience, and workload. Legislative Services Division has 20 bill drafters (9 attorneys and 11 research analysts). Last session, legislators requested 2,581 bills--an average of 129 bill draft requests for each drafter. Each drafter must work on assigned bills in the order received, from the lowest LC number to the highest, regardless of how important any particular bill draft is to a legislator. Legislators should get their most important and most complex bill draft requests in first.

Bill drafts go through two stages: the drafting and initial review of the draft by the legislator and, then, a formal review process. In the initial stage:

- (1) The bill drafter contacts the legislator, talks to other contacts the legislator has provided, analyzes all the necessary information, and drafts the bill. The

drafter must also ensure that all items of the drafter's check list have been considered, such as conformity to the U.S. and state constitutions, whether a fiscal note will be required, and what effective date is most appropriate. When all of this has been completed, the initial review draft is sent to the legislator.

- (2) The legislator then reviews the draft and has the opportunity to ask questions, make changes, or request more time for review.
- (3) When the legislator is satisfied with the draft, the drafter forwards the bill to legal review and the formal review of the draft begins.

The formal review of the bill draft consists of seven steps:

- (1) Legal review: The legal services director conducts a legal review of each bill draft and will return a draft to the drafter if constitutional, legal, or technical problems are discovered in the bill draft. If significant changes are required, the drafter may contact the legislator and determine whether a "redo" (a term of art) of the bill draft is required (see below for a discussion of redrafting a bill after it is submitted for formal review). Most of the time, the drafter simply makes the changes and returns the bill to legal review.
- (2) Editor review: After the draft passes legal review, it is forwarded to an editor who ensures that the draft conforms to the Bill Drafting Manual, that the drafter has checked all internal references to other sections of law, and that the language is grammatically correct and as clear as possible.
- (3) Drafter review: After editing, the marked up bill draft is returned to the drafter, who reviews the edits to ensure that the changes will not alter the legislator's intent.
- (4) Text processing: After the drafter reviews the edited draft, the draft is forwarded to text processing where the handwritten legal, technical, and edit changes are typed into the bill draft. The draft is proofed to make sure all changes have been entered.
- (5) Drafter review: After text processing, the drafter reviews the draft a final time.
- (6) Executive director review: After the drafter's final review, the bill draft is forwarded to the executive director of the Legislative Services Division for a last review to ensure that all items on the bill drafter checklist have been appropriately completed.
- (7) Official preparation: Finally, the draft is ready to ready for introduction into the Legislature. It is

printed on special acid free paper and "backed" with a tracking card so that the original can be officially and appropriately handled from introduction to final disposition.

If a legislator wants to change the bill draft after it has entered formal review, a time-consuming redo is required. Because of deadlines and staff workload, if a legislator requests more than one redo at any time after the formal review has started, the bill loses its priority and is moved to the bottom of the drafter's stack of assigned requests. Thus, the initial stages of the bill draft is critical and is discussed in more detail later.

When the bill is ready for introduction, the legislator will be notified and may pick up the bill from Legislative Services Division at any time. However, once picked up, the bill must be introduced within two legislative days, or it will be canceled.

The stages of bill drafting and review and the progress of the bill through the Legislature can be tracked online through the Legislative Automated Workflow System (LAWS) by following the links from the Montana Legislative Branch webpage at www.leg.mt.gov.

HAVE A CLEAR OBJECTIVE AND CONVEY THAT OBJECTIVE TO THE DRAFTER

Bill draft requests should be made with a clear objective in mind. As a legislator, you should have a clear understanding of the problem to be solved and how the bill would solve it, and you should be available to communicate that objective to the bill drafter when the drafter is ready to work on your bill.

A bill draft request such as "make health care more affordable" or "improve government efficiency" cannot be drafted until the drafter gets more specific information from the requestor. When the bill drafter contacts you, be ready to explain the bill request by describing the problem, providing examples, and specifying how you envision your bill would solve the problem or apply in certain situations. If you are unable to provide the information, work on your request will be suspended (put on "hold"--another term of art) until you are ready to do so. A bill draft on hold will be recorded on LAWS.

PROVIDE AS MUCH BACKGROUND INFORMATION AS POSSIBLE

The more background information you can give the drafter will save you and the drafter a lot of time. If you are working with a constituent, lobbyist, public interest group, or someone else who has details and information essential to your bill draft, please provide on your bill draft request form the names, phone numbers, and email addresses for those contacts. Also, if your bill request is based on a law in another state, model legislation produced by an organization, or a bill introduced in a previous session, attach that material

to the bill draft request form or provide a reference so the drafter can obtain a copy of the law, model legislation, or bill.

CAREFULLY READ AND COMPARE THE INITIAL REVIEW DRAFT AND ASK QUESTIONS

As noted previously, the a legislator's initial review of the bill draft is very important. Too often, legislators do not carefully read the draft until it is ready for introduction; or, worse yet, not until the bill is scheduled for a committee hearing. By then, making corrections and changes is much more difficult and time consuming. After receiving the initial review draft, you should carefully read the draft and discuss each aspect of the bill with the drafter so that you understand each section of the bill and are sure the drafter understood and fulfilled your intent. If there is something in the bill you do not understand, ask. Keep in mind that legal, technical, and editing changes are made during the formal review, so keep the initial review draft of your bill to compare it with the bill that is ready for introduction. Ask questions if there have been changes you do not understand.

STAY ENGAGED, DON'T LEAVE IT ALL TO SOMEONE ELSE

Often, a bill draft request is made on behalf of a constituent, organization, or agency, and legislators are tempted turn the entire bill drafting process over to that person or entity. However, even if you instruct the drafter to work with someone else, as the sponsor of the bill, you are the one who will have to answer questions about the bill in committee hearings and on the floor. Sometimes constituents or lobbyists request drafting changes that may depart from your initial understanding of the bill. Staying engaged in the bill drafting process will facilitate your working knowledge of the bill and ensure that the bill is drafted to accomplish what you expected it to when you requested it.

LIMIT AND PRIORITIZE REQUESTS WITH DEADLINES IN MIND

Carefully reading and understanding all of your bill drafts takes time, not to mention the time required to carry each bill through the session. It is best to limit and prioritize your requests. Many bills die in the drafting process or fail to meet transmittal deadlines because they were requested or introduced too late. Of the 2,581 bills requested last session, 1,526 bills were introduced and only 526 survived to become law. Not all bills die because of the deadlines, but a lot do. By rule, a legislator may request an unlimited number of bills until 5 p.m. on December 5. After that, each legislator is limited to seven bill draft requests, of which no more than two may be requested after the session convenes. Become familiar with the request, introduction, and transmittal deadlines. These deadlines are outlined in the legislative rules adopted by each Legislature at the beginning of the session. The bill request and introduction deadlines are found in joint rule 40-50. Transmittal deadlines are found in joint rule 40-200.

IN SUMMARY

Getting down to legislative business starts with bill drafting, and legislators will be more effective in transforming their ideas into laws if, when their bills are being drafted, they:

- understand the process;
 - have a clear objective and communicate that objective to the drafter;
 - provide as much background information as possible, such as copies of other laws or model legislation;
 - carefully read the initial review draft, compare the initial draft to the final bill, and ask questions;
 - stay engaged, don't leave it all to someone else; and
 - limit and prioritize requests with deadlines in mind.
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INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED, ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
November 2008						1
2	3	4	5	6 Legislative Audit Committee, Room 172	7 Legislative Audit Committee, Room 172	8
9	10	11	12 Legislative caucuses Orientation and training for new and veteran legislators	13 Orientation and training for new and veteran legislators	14 Orientation and training for new and veteran legislators	15
16	17 Revenue and Transportation Committee, Room 137, 10 a.m.	18 Revenue and Transportation Committee, Room 137, 8 a.m. Legislative Finance Committee, Room 102, 8 a.m. Legislative Council	19 LAWS demonstra- tion, Room 102, 9:30-11:30 a.m. and 1-3 p.m. Open to the public	20	21	22
23	24	25	26	27	28	29
30						

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 2008						
	1	2	3	4 LAWS demonstra- tion, Room 102, 9:30-11:30 a.m. Open to the public	5	6
7	8 Media orientation day, Room 102, 10 a.m. Revenue and Transportation Committee, tentative	9 Revenue and Transportation Committee, tentative	10	11	12	13
14	15 Committee chair training Rules Committee meeting	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

LEGISLATIVE SERVICES DIVISION
PO BOX 201706
HELENA MT 59620-1706